THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.21128 OF 2000

DATED: 06-07-2006

BETWEEN

Smt. Champabai, W/o. Manmal Jain,
R/o. Rasoolpura, Secunderabad.

...PETITIONER

AND

The Mandal Revenue Officer,
Secunderabad Mandal,
Sardarpet Road, Opp: Anand Talkies,
Secunderabad and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action the of the respondents 1 to 3 in interfering with her rightful possession and enjoyment and construction activity in premises No.1-19-4 and 1-19-5 of Rasoolpura, Secunderabad as illegal and violative of Articles 14, 21 and 300 'A' of the Constitution of India.

Learned counsel for the petitioner submits that the petitioner is the absolute owner and possessor of 315.55 sq. yards of land with structures bearing D.Nos.1-19-4 and 1-19-5 having purchased the same under a Registered Sale Deed dated 12.09.1994 from one Haroom Rasheed. He further submits that the said premises had old house Nos.105 and 106 situated in Guntroop Bazar and after the area Guntroop Bazar was vested in the cantonment, the name of the area was changed as Rasoolpura and the assessment numbers of the houses were also changed as H.Nos.1-19-1 to

13. He further submits that to the said effect the Executive Officer, Cantonment, Secunderabad, issued a letter dated 08.12.1983. The Mandal Revenue Officer, Secunderabad vide his Letter No.F/2848/98 informed to the District Collector that S.No.74/1 of Rasoolpura Village is not covered under detailed Town Survey and according to the revenue records the said survey number is classified as “Rasoolpura Abadi”.

The perusal of the said letter goes to show that the owners of house Nos.1-19-1 to 13 made certain complaints against the respondents 4 and 5 herein viz. Sri Ahmed and D. Sudershan and the documents produced before the MRO reveals that the said property is a private property.

A counter has been filed by the Mandal Revenue Officer on behalf of the respondents 1 to 3 stating that the internal correspondence between the MRO and the District Collector cannot confer any title on the petitioner and the respondents have initiated a separate action against the then MRO for sending a wrong report.

The fact remains that the revenue authorities have not initiated any action so far either for claiming the title or for initiating action under the Land Encroachment Act.

Learned counsel for the petitioner submits that as the petitioner and her predecessors in title are in long standing possession of the premises claiming right, title and interest, the question of initiating any proceedings under the Land Encroachment Act does not arise and the only course open to the Government is to file a civil suit to establish the title.

I am not inclined to express any opinion, as admittedly, the Government has not initiated any action and without any action being initiated against the petitioner it is not open for the respondents to interfere with the possession and enjoyment of the premises in question.

It is the further case of the petitioner that based on the title deeds produced by her, the Cantonment granted building permission and therefore, she has constructed the house as per the sanction accorded by the Cantonment Board.

There is no dispute with regard to the construction as the Cantonment has granted sanction and it is the authority to take action against the petitioner for any illegal construction. The only dispute is between the petitioner and the Government officials.

If the Government has title to the said property it is always open for it to establish the title in appropriate forum but without initiating any action it may not be just and proper for the respondents 1 to 3 to interfere with the possession and enjoyment of the petitioner.

The writ petition is accordingly disposed of directing the respondents 1 to 3 not to interfere with the peaceful possession and enjoyment of the petitioner without following due procedure of law. There shall be no order as to costs.

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V. ESWARAIAH, J

July 6, 2006
DSK